IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7747 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT SACHIVALAYA EMPLOYEES CO-OP CREDIT SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR SN THAKKAR for Petitioners

MS MANISHA LAVKUMAR for Respondent No. 1

None present for Respondent No.2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/2000

ORAL JUDGEMENT

#. Challenge has been made by petitioners to the order dated 7.3.91 of respondent No.1, annexure-D, under which the revision filed by respondents No.2 and 3 has been

allowed.

#. The facts of the case are that the petitioner No.1 is the cooperative credit society, duly registered under the provisions of the Gujarat Cooperative Societies Act, 1961. The petitioner No.2 is the custodian of petitioner No.1-society. The respondents No.2 and 3 are the persons who amongst other persons were held liable under the inquiry by the inquiry officer on the charges of committing grave financial irregularity at the time when they were Secretary and Joint Secretary of the petitioner No.1-society. The order of the District Registrar to give direction to the custodian to recover the amount from the persons who are held responsible for this mismanagement and irregularities in the functioning of the society has been challenged by respondents No.2 and 3 by filing revision before the Additional Registrar, Cooperative Societies (Appeals) Gandhinagar. That revision application has been dismissed and the order of the District Registrar, was upheld. Further revision has been filed by respondents No.2 and 3 before the respondent No.1 which came to be allowed under the impugned order. Hence this special civil application.

#. One of the contentions raised by learned counsel for the petitioners is that the order impugned has been passed by respondent No.1 without giving any notice or opportunity of hearing to the petitioners. It has further been mentioned that even in the revision application, none of the petitioners have been impleaded as party by respondents No.2 and 3. It is submitted that Section 151 of the Gujarat Cooperative Societies Act, 1961, though has conferred power of revision upon the State Government, an order adverse to the society could have been passed only after giving opportunity of hearing to it. That is what has not been done and only on this ground, what the learned counsel for the petitioners submit that this petition deserves to be allowed.

#. Reply to the special civil application has not been filed by any of the respondents, more particularly, respondent No.1. The averments made in special civil application that the petitioner were not impleaded as party to the revision application by respondents No.2 and 3 and no notice and opportunity of hearing has been given to them by respondent No.1 before deciding the revision application stand uncontroverted. The learned counsel for the respondent No.1 is also unable to show that the orer impugned in this special civil application has been passed after giving notice and opportunity of hearing to the petitioners. It is a case where the respondents No.2

and 3 who were the office bearers of the petitioner No.1-Society were held responsible for liabilities created due to the mismanagement of the affairs of the society and under the impugned order, they have been absolved of that liability. This order certainly results in causing prejudice to the petitioners and the respondent No.1 could have passed such an order only after giving notice and opportunity to the petitioners which has not been done. Only on this ground this writ petition succeeds and the same is allowed. The order dated 7th March 1991, annexure-D, of respondent No.1 is quashed and set aside and the respondent No.1 is directed to restore the revision application to its original number and after impleading the petitioners as party thereto and giving them the notice and opportunity of hearing, to decide the same afresh. Rule is made absolute accordingly. The respondent-State of Gujarat is directed to pay Rs.2,000/= as costs of this petition to the petitioners as what this amount has been charged by learned counsel from the petitioners from them to provide them professional services.

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(sunil)